

Anthony Ostlund
BAER & LOUWAGIE

January 22, 2018

Steven C. Kerbaugh
skerbaugh@anthonyostlund.com

Via ECF

The Honorable Hildy Bowbeer
United States District Court
632 Federal Building
316 North Robert Street
St. Paul, MN 55101

**Re: *Upsher-Smith Laboratories, Inc. v. Fifth Third Bank*
Court File No. 16-cv-00556-JRT-HB**

Dear Magistrate Judge Bowbeer:

Pursuant to the Court's direction, as detailed in the Case Management Conference Court Minutes dated October 30, 2017 (Dkt. No. 112), Upsher-Smith Laboratories, Inc. ("Upsher-Smith") and Fifth Third Bank ("Fifth Third") jointly write to provide the Court with an update regarding mediation.

The parties convened in Florida for a mediation with Judge Richard Solum (Retired) on January 15, 2018. The mediation was scheduled to run for two days, but the parties agreed to defer the second day while representatives conferred further with all interested decisionmakers. While no resolution of this matter was reached at the mediation, both parties indicated a willingness to engage in further settlement discussions facilitated by Judge Solum, who is continuing to communicate with the parties in an attempt to reach a mediated settlement.

Consistent with his reputation, Judge Solum has immersed himself deeply in the details of the case. The parties believe that the best opportunity for settlement is through continued discussions facilitated by Judge Solum. Therefore, the parties do not request a telephone conference with the Court to discuss the status of the case at this time but will reassess this prospective step in the next few weeks, as fact discovery ends February 13, 2018.

Very truly yours,

ANTHONY OSTLUND
BAER & LOUWAGIE P.A.

/s/ Steven C. Kerbaugh

Steven C. Kerbaugh

Very truly yours,

VORYS, SATER, SEMOUR
AND PEASE LLP

/s/ Nathan L. Colvin

Nathan L. Colvin

cc: All counsel of record (via ECF)